(Original Civil Jurisdiction)

Gerahty, J.

October 10, 1932.

R. M . M. SUBRAMANIAN CHETTY..Plaintiff

vs.

MOHAMED ARSHAD.....Defendant

(Perak Civil Suit No. 342 of 1931)

Land Code 1926, *Section* 134—*Lien.*

A sale of land upon an application by a holder of a lien created in pursuance of the provisions of Section 134 of the Land Code 1926 is in the nature of a sale in execution and is governed by the provisions of the Civil Procedure Code in respect of such sales. No upset price should therefore be fixed.

In a suit to recover money due upon a Promissory Note coupled with the usual prayers for a declaration of a lien over lands under Section 134 of the Land Code 1926 and for an order of sale of such lands the Plaintiff was granted all the relief prayed.

The Order for Sale was issued and the Registrar fixed an upset price upon the same basis as is provided in the case of chargee proceedings under Section 149 of the Land Code 1926.

The Defendant applied for a stay of sale and the Plaintiff in a cross-application asked that the Order of Sale be set aside and a fresh Order issued without any upset price.

John L. Woods for the Plaintiff: The only statutory provision for upset prices is in the case of chargee Sales. Under Section 134 a suit is brought and the proceedings are under the Civil Procedure Code 1918. Section 134 merely creates the right and gives the lien holder priority in the sale which must be held under the Civil Procedure Code.

Defendant in person did not argue the point.

Gerahty J. delivered oral judgment as in the Head Note.

(Original Civil Jurisdiction)

Gerahty, J.

October 10, 1932.

HONGKONG AND SHANGHAI BANKING CORPORATION.....Chargee

vs.

P. L. S. L. P. L. KUMARAPPA CHETTY .....Chargor

(Perak Civil Application No.227 of 1932)

Land Code 1926, *Sections* 138, 139 and 149—*Notice.*

In the case of a charge payable on demand a chargee is not entitled to file a summons to show cause under Section 149 of the Land Code 1926 until after the expiration of one month from the service of the demand in writing pursuant to Section 139.

The words "default.....continuing for the space of one month" in Section 149 do not refer only to the minimum statutory period of default under Section 138 (i) (a) but also to Section 139.

On 15th October 1928 a charge from the Chargor to the Chargee substantially in the form of Schedule XXIV (c) and repayable on demand was registered over certain lands in the township of Ipoh.

On 24th day of August 1932 the Chargee sent to the Chargor a demand in writing to repay forthwith the principal sum and interest, and the same was received by the Chargor upon the 25th day of August 1932.

On 17th day of September 1932 the Chargee filed a summons to show cause under section 149 and the same came for hearing on the 3rd and 10th days of October 1932.

L. T. Williams for the Chargee: Section 139 absolves a Chargee from waiting for the period mentioned in Section 149. In an "on demand" Charge the default, under the latter Section, is complete when the Chargee has given reasonable time after his demand in writing to repay forthwith.

Section 138 sub-section (i) only requires one "notice in writing" that is of not less than 30 days, which covers the period of default referred to in section 149.

Section 139 provides that "a demand in writing" shall be equivalent to "the notice in writing" provided for by Section 138 sub-section (i) and that no other notice shall be required to create the default mentioned in Section 149.

John L. Woods for the Chargor: the only difference between cases under Sections 138 and 139 is that under Section 138 there are two periods and two defaults, under Section 139 one period and one default. The first default under Section 138 is automatic under the terms of the Charge. Thirty days thereafter notice may be given which creates the second default mentioned